

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RYAN A. SMITH,

Plaintiff,

v.

**9:16-CV-602
(FJS/ATB)**

**ANTHONY J. ANNUCCI, Acting Commissioner
of Corrections; MICHAEL VELEZ, Grievance
Commissioner; and MICHAEL SHEAHAM,
Superintendent, Southport Correctional Facility,**

Defendants.

APPEARANCES

OF COUNSEL

RYAN A. SMITH

14-A-0536

Downstate Correctional Facility

Box F

Fishkill, New York 12524

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224

Attorneys for Defendants

CHRISTOPHER J. HUMMEL, AAG

SCULLIN, Senior Judge

ORDER

On November 28, 2016, Magistrate Judge Baxter issued a Report-Recommendation, in which he recommended that this Court grant Defendants' motion to dismiss for failure to state a claim and dismiss the complaint without prejudice "to [P]laintiff filing a proper motion to amend, together with a proposed amended complaint [consistent with the Report-Recommendation] within

forty-five (45) days of the date of the [O]rder approving [his] Report-Recommendation." *See* Dkt. No. 23 at 14. The parties did not file any objections to the Report-Recommendation within the required time frame.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting its review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge." *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Baxter's November 28, 2016 Report-Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Baxter's November 28, 2016 Report-Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

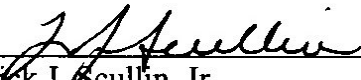
ORDERS that Defendants' motion to dismiss Plaintiff's complaint for failure to state a claim, *see* Dkt. No. 18, is **GRANTED**; and the Court further

ORDERS that Plaintiff's complaint is **DISMISSED without prejudice** to Plaintiff filing a proper motion to amend his complaint, together with a proposed amended complaint consistent with Magistrate Judge Baxter's November 28, 2016 Report-Recommendation within **forty-five (45) days of the filing date of this Order**; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: December 20, 2016
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge